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Thursday, October 15, 2020

Private Equity CEO Enters into Non-Prosecution Agreement on International Tax Fraud Scheme and Agrees to Pay \$139 Million, to Abandon \$182 Million in Charitable Contribution Deductions, and to Cooperate with Government Investigations

SAN FRANCISCO – Robert F. Smith, the Chairman and Chief Executive Officer of a San Francisco based private equity company, entered into a Non-Prosecution Agreement (the agreement) with the Department of Justice, for his involvement from 2000 through 2015 in an illegal scheme to conceal income and evade millions in taxes by using an offshore trust structure and offshore bank accounts, announced U.S. Attorney David L. Anderson for the Northern District of California, Principal Deputy Assistant Attorney General Richard E. Zuckerman of the Tax Division, and Chief of Internal Revenue Service (IRS) Criminal Investigation Jim Lee. In that agreement, Smith admits his involvement in the illegal scheme and agrees to cooperate with ongoing investigations and to pay back taxes and penalties in full.

“It is never too late to do the right thing,” said U.S. Attorney Anderson. “It is never too late to tell the truth. Smith committed serious crimes, but he also agreed to cooperate. Smith’s agreement to cooperate has put him on a path away from indictment.”

According to the agreement, Smith, a resident of Austin, Texas, formed the Excelsior Trust in Belize, and a shell company, Flash Holdings, in Nevis in 2000. Smith used third-parties to conceal his beneficial ownership and control of the Excelsior Trust and Flash Holdings. In reality, Smith controlled both offshore structures and made all substantive decisions regarding Flash Holdings’ operations, transactions, income, investments and assets. Smith used the Excelsior Trust to conceal his ultimate ownership and control over Flash Holdings. He further used Flash Holdings to hide his interest in private equity investments. Smith admits that he formed these foreign entities in order to use them to avoid the payment of U.S. taxes.



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Furthermore, Smith admits that he knowingly and intentionally used the Excelsior Trust and Flash Holdings and their associated foreign bank accounts in the British Virgin Islands and Switzerland to conceal from the IRS, and the U.S. Treasury Department, income earned and distributed to Flash Holdings from private equity funds. As a result of the overall scheme, Smith willfully did not report to the IRS over \$200 million of partnership income. Smith also failed to report his ownership of his foreign bank accounts in BVI and Switzerland as required by law.

Over the years, Smith used millions of this unreported income to acquire and make improvements to real estate used for his personal benefit. Smith admits that, in 2005, he used approximately \$2.5 million in untaxed funds to purchase and renovate a vacation home in Sonoma, California. In 2010, Smith again used untaxed funds to purchase two ski properties and a piece of commercial property in France. In 2011 and 2012, Smith used approximately \$13 million of untaxed funds to build and make improvement to a residence in Colorado and to fund charitable activities at the property.

Under the terms of the agreement, Smith has agreed to continue cooperating with the Department of Justice in other related investigations. Further, Smith has agreed to pay approximately \$56 million in taxes and penalties stemming from the unreported income and another \$82 million in penalties stemming from his concealment of his offshore bank accounts. Taken altogether, Smith will pay more than \$139 million in taxes and penalties.

Additionally, Smith agrees to abandon his protective claims for a refund totaling approximately \$182 million that were filed with the IRS. The protective refund claims consisted, in part, of claims filed with the IRS for charitable contribution deductions on Sept. 21, 2018, and Oct. 11, 2019. As a result of the agreement, Smith shall take no further direct or indirect tax benefit from such claims.

U.S. Attorney Anderson; Principal Deputy Assistant Attorney General Zuckerman; and Jim Lee, Chief of IRS-Criminal Investigation, commended special agents of IRS-Criminal Investigation, who conducted the investigation, and the attorneys who handled the case. The case is being handled by Assistant U.S. Attorney Michael G. Pitman, Senior Litigation Counsel Corey Smith of the Tax Division, and Trial Attorneys Lee Langston and Christopher Magnani of the Tax Division. The Justice Department's Office of International Affairs of the Department's Criminal Division also provided extensive assistance in this matter.

Attachment(s):

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